

State of Colorado



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State Personnel Board
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AGENDA PUBLIC BOARD MEETING May 17, 2016

A public meeting of the Colorado State Personnel Board will be held on Tuesday, May 17, 2016 1525 Sherman Street, 1st Floor Conference Room 103, Denver, Colorado 80203. The public meeting will commence at 9:00 a.m.

Reasonable accommodation will be provided **upon request** for persons with disabilities. If you are a person with a disability who requires an accommodation to participate in this meeting, please notify Board staff at 303-866-3300 by May 13, 2016.

CALL TO ORDER

- Attendance.
- Disclosure of any potential conflicts of interest with regard to present Board business and notice of recusal, if applicable.

I. REPORT OF DEPARTMENT OF PERSONNEL AND ADMINISTRATION [DPA] AND REPORT OF THE DIVISION OF HUMAN RESOURCES [DHR]

II. PENDING MATTERS

III. REVIEW OF INITIAL DECISIONS OR OTHER FINAL ORDERS OF THE ADMINISTRATIVE LAW JUDGES ON APPEAL TO THE STATE PERSONNEL BOARD

IV. REVIEW OF PRELIMINARY RECOMMENDATIONS OF THE ADMINISTRATIVE LAW JUDGES TO GRANT OR DENY PETITIONS FOR HEARING

- A. Peter C. Martinez v. Department of Personnel & Administration, State Personnel Board case number 2016G053.

Complainant seeks a hearing to review the State Personnel Director's (Director's) decision denying his appeal of his non-selection by Respondent, following a comparative analysis, for an open Technician IV position. Complainant argues that Respondent's selection of a candidate who already held a Technician IV position at another location denied Complainant and the other applicants who were not already in a Technician IV position an opportunity to compete fairly for this promotional opportunity, violating § 24-50-112.5, C.R.S., and Board Rules 4-10 and 4-14. Complainant seeks placement in the Technician IV position he

was denied, or the “same position within a reasonable distance,” and pay lost due to his non-selection.

Respondent argues that the appointing authority’s decision did not violate the comparative analysis standards set forth in rule or law, and because Complainant has failed to establish grounds that merit a hearing in this case, Complainant’s petition for a hearing should be denied.

On April 20, 2016, the Administrative Law Judge issued a Preliminary Recommendation that the petition for hearing be denied.

B. Barry M. Johnson v. University of Northern Colorado, State Personnel Board case number 2016S014.

Complainant appeals his non-selection for a position as a [parking] Lot Enforcement Officer at the University of Northern Colorado (UNC or Respondent). Complainant argues that Respondent discriminated against him on the basis of age, that another applicant was given an unfair advantage, and that Respondent did not grant him a veteran’s preference. As relief, Complainant requests that he be given a position at Colorado State University, Fort Collins, without competition, equal to or greater than the UNC Lot Enforcement Position, as well as punitive damages.

Respondent argues that the non-selection decision in this matter was made without regard to considerations of Complainant’s age, and that because none of the final candidates for the position was hired, there was no unfair advantage provided to another applicant. Respondent also contends that Complainant waived his veteran’s preference argument by not raising it on his appeal form and, in any event, Complainant failed to provide the appropriate form to qualify for the preference; furthermore, even if Complainant had provided the necessary documentation and been granted a veteran’s preference, his structured application review score would have remained too low to obtain an interview for the position. As relief, Respondent requests that the Board deny Complainant’s petition for hearing, deny Complainant’s requested relief and dismiss the petition with prejudice.

On April 21, 2016, the Administrative Law Judge issued a Preliminary Recommendation that the petition for hearing be granted on the Complainant’s claim of age discrimination.

V. **INITIAL DECISIONS OR OTHER FINAL ORDERS OF THE ADMINISTRATIVE LAW JUDGES**

A. Kathy Starling v. Department of Revenue, Tax Audit and Compliance Division, State Personnel Board case number 2014G013.

On August 31, 2015, Administrative Law Judge Pamela Sanchez entered the Initial Decision of the Administrative Law Judge in this matter (“Initial Decision”). The Initial Decision upheld Respondent’s decision not to allow Complainant to submit an application for the position of Tax Examiner II after the application period had closed. The Initial Decision concluded that Respondent’s decision did not violate the Colorado Anti-Discrimination Act (“Conclusion of Law 1”) and was not arbitrary or capricious or contrary to rule or law (“Conclusion of Law 2”). The Initial Decision also concluded that the parties should each bear their own attorney fees and costs (“Conclusion of Law 3”). Complainant appealed the Initial Decision to the State Personnel Board (“Board”).A

After consideration of the record on appeal during meetings of the Board, the Board entered an order dated March 16, 2016. The Board Order adopted the Findings of Fact in the Initial Decision but reversed ALJ Sanchez’s Conclusions of Law 1 and 2. The Board Order did not reverse ALJ

Sanchez's Conclusion of Law No. 3. The Board Order states: "IT IS FURTHER ORDERED that the matter shall be remanded to the Administrative Law Judge for purposes of determining the appropriate remedy. This ALJ ordered the parties to brief the issue on remand. On April 22, 2016, both parties filed briefs addressing the issue on remand.

On April 27, 2016, the Administrative Law Judge issued an Order Regarding Remedy.

VI. REVIEW OF THE MINUTES FROM THE April 19, 2016 PUBLIC MEETING OF THE STATE PERSONNEL BOARD

VII. ACKNOWLEDGMENTS

DECISIONS OF THE STATE PERSONNEL BOARD MADE AT ITS APRIL 19, 2016 PUBLIC MEETING:

A. James Jimerson v. Department of Corrections, Buena Vista Correctional Facility, State Personnel Board case number 2015B003.

The Board voted to deny Complainant's motion for stay of the appeals process. In a second action, the Board voted to deny Respondent's motion for an award of attorney's fees and costs.

B. Carol J. Kromer v. Department of Corrections, Colorado Board of Parole, State Personnel Board case number 2016G054.

The Board voted to adopt the Preliminary Recommendation of the Administrative Law Judge and deny the petition for hearing.

C. Seth Downs v. Department of Labor and Employment, Unemployment Insurance Division, State Personnel Board case number 2016G040(C).

The Board voted to adopt the Preliminary Recommendation of the Administrative Law Judge and grant the petition for hearing.

D. William D. Nauroth v. University of Northern Colorado, Information Management and Technology, State Personnel Board case number 2016G050(C).

The Board voted to adopt the Preliminary Recommendation of the Administrative Law Judge and deny the petition for hearing.

E. Jamie Thornton v. Department of Public Health & Environment, Office of Legal and Regulatory Compliance, State Personnel Board case number 2016G056.

The Board voted to adopt the Preliminary Recommendation of the Administrative Law Judge and grant the petition for hearing.

F. Carol Cordova v. Department of Human Services, Office of Community Access & Independence, Wheat Ridge Regional Center, State Personnel Board case number 2016B089. (March 14, 2016)

The Board took no further action on the Initial Decision of the Administrative Law Judge.

VIII. ADMINISTRATIVE MATTERS & COMMENTS

- A. ADMINISTRATIVE MATTERS
 - Cases on Appeal to Appellate Courts

B. OTHER BOARD BUSINESS
(Director's Report)

- 2016 Board Election process and timeline
- Staffing update

C. GENERAL COMMENTS FROM ATTORNEYS, EMPLOYEE ORGANIZATIONS,
PERSONNEL ADMINISTRATORS, AND THE PUBLIC

IX. PROPOSED LEGISLATION AND/OR RULEMAKING

X. EXECUTIVE SESSION

ADJOURN:

REGULARLY SCHEDULED BOARD MEETINGS - 9:00 a.m.

January 19, 2016	Colorado State Personnel Board 1525 Sherman Street, 1st Floor Conference Room 103 Denver, CO 80203
February 16, 2016	Colorado State Personnel Board 1525 Sherman Street, 1st Floor Conference Room 103 Denver, CO 80203
March 15, 2016	Colorado State Personnel Board 1525 Sherman Street, 1st Floor Conference Room 103 Denver, CO 80203
April 19, 2016	Colorado State Personnel Board 1525 Sherman Street, 1st Floor Conference Room 103 Denver, CO 80203
May 17, 2016	Colorado State Personnel Board 1525 Sherman Street, 1st Floor Conference Room 103 Denver, CO 80203
June 21, 2016	Colorado State Personnel Board 1525 Sherman Street, 1st Floor Conference Room 103 Denver, CO 80203
July 19, 2016	Colorado State Personnel Board 1525 Sherman Street, 1st Floor Conference Room 103 Denver, CO 80203
August 16, 2016	Colorado State Personnel Board 1525 Sherman Street, 1st Floor Conference Room 103 Denver, CO 80203
September 20, 2016	Colorado State Personnel Board 1525 Sherman Street, 1st Floor Conference Room 103 Denver, CO 80203
October 18, 2016	Colorado State Personnel Board 1525 Sherman Street, 1st Floor Conference Room 103 Denver, CO 80203
November 15, 2016	Colorado State Personnel Board 1525 Sherman Street, 1st Floor Conference Room 103 Denver, CO 80203
December 20, 2016	Colorado State Personnel Board 1525 Sherman Street, 1st Floor Conference Room 103 Denver, CO 80203